

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1294

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

To be argued by
JONATHAN J. SILBERMANN

-----X
UNITED STATES OF AMERICA,

Appellee,

-against-

STEVEN HYATT,

Appellant.
-----X

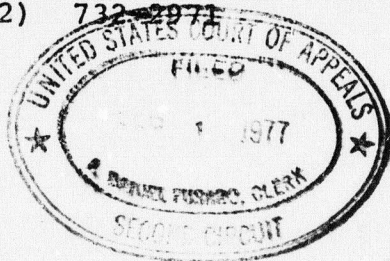
Docket No. 77-1294

APPENDIX FOR APPELLANT
STEVEN HYATT

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MARTIN ERDMANN, ESQ.,
THE LEGAL AID SOCIETY
Attorney for Appellant
STEVEN HYATT
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,
Of Counsel.



031
1 E
FELON

PAGINATION AS IN ORIGINAL COPY

U.S. District Court

MAGISTRATE Assigned

U.S.

vs.

STEVEN HYATT

(LAST, FIRST, MIDDLE)

1 Disp./Sentence

1 District Office

U.S. TITLE/SECTION

T-18;495 & 2.

OFFENSES CHARGED

Did knowingly, wilfully receive a sum of money from the U.S. Treasury. Check payable to another, knowing same to have been false and forged.

Case Filed Mo. Day

NEAHER, J.

U.S. MAG. CASE NO.

76 M 262

BAIL - RELEASE

AMT Set ☒ Fugitive ☒ Pers. Reco

\$ 5,000 ☒ PSA

12-17-76 ☒ 10% Depos

☒ Surety Bon

☒ Collateral

☒ 3rd Prty Cust

SENTENCE

Disposition of Charges

☒ Convicted ☐ On All Cha

☐ Acquitted ☐ On Lesser Offense(s)

☐ Dismissed ☐ WOP

☐ On Government's Motion

II. KEY DATES & INTERVALS

ARREST or

U.S. Custody Began

Summons Served

First Appearance

12-17-76

INDICTMENT

High Risk Date

Information ☒

1-11-77

Indict. Waived

In Charging District

Superseding ☒ Indict/Info

2-16-77

ARRAIGNMENT

1.21.77

1st Plea

Final Plea

TRIAL

Trial Set For

Voir Dire

4/15/77

Trial Began

11

Trial Ended

5/7/77

MAGISTRATE

INITIAL/NO.

OUTCOME:

Search Warrant

Issued

Return

Summons

Issued

Served

Arrest Warrant Issued

COMPLAINT

OFFENSE (In Complaint)

12-17-76 VAC/07AA

Uttering US Treasury Check. T-18 USC Section 495

INITIAL APPEARANCE DATE

PRELIMINARY EXAMINATION OR

REMOVAL HEARING

☒ WAIVED ☐ NOT WAIVED

☐ INTERVENING INDICTMENT

Date Scheduled 1-14-73

Date Held

Tape Number

☐ DISMISSED

HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

☒ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW:

ATTORNEYS

Defense: ☐ CJA ☐ Ret: ☐ Waived ☐ Self ☐ None ☒ Other ☐ PD ☐ CD

U.S. Attorney or Asst.

Gavin Scotti

Stanley A. Teitler

Legal Aid Society

* Show last names and suffix numbers of other defendants on same indictment information:

EXCLUDED

(a) (b)

LINDA ANDRE, 2.

(DOCUMENT NO.)

PROCEEDINGS

DATE

12-22-76

Letter received from D.C. Philip Katowitz, Esq. waiving the hearing. See attached letter on file.

1-11-77

Information filed.

1.21.77

Before Judge Neaheer, - Case Called. Deft. & Counsel present Deft. enters a plea of not guilty. Bail set at \$5,000.00 PRB. Case adjd. to 2-22-77 for Status Report at 10:00 A.M. SUPERSEDING INDICTMENT FILED (S)

2-16-77

2-22-77

Before NEAHER, J - case called - deft not present - Case adjd to 2-25-77 at 12 Noon.

2-25-77

Before CATOGGIO, U.S. Magistrate-Case called-Deft and counsel present-Deft arraigned and enters plea of not guilty-Bail continued-Case set down for 3-25-77 at 10 AM before Judge Neaheer for motions and for fixing trial date.

3/25/77

Before NEAHER, J. - Case called. Deft & Counsel present. Case adjd to 4/18/77 at 10:00 a.m. for trial.

3/31/77

Notice of motion filed for an order directing the U.S. Atty to inform the deft of the full name and address of the infor and motion forwarded to chambers.

(DOCUMENT NO.)

Interval Section II (a)	Start Date End Date (b)	Lv. Code (c)	Total Days (d)	For Part able USC A
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7	Before Neaheer, J.- Case Called. Deft. present with Counsel. Case adjd. to 4.20.77 at 10:00 A.M. for Trial.				gp
4.21.77	Before Neaheer, J.-case called defts & counsel present defts motion to suppress-argued-decision reserved-trial ordered and begun-selection of jury begun-trial contd to 4/21/77.JLJ				
4.21.77	By Neaheer, J.- Writ of Habeas Corpus Ad Testificandum issued.				
4.21.77	Before Neaheer, J.- Case Called. Deft. not present. Counsel present. Trial continued to 4.22.77 at 11:00 A.M.				gp
4.22.77	Before Neaheer, J.- Case Called. Deft. & Counsel present. Suppression hearing begun. Govt. rests. Deft's. motion to suppress denied. Case adjd. to 4.25.77 at 10:00 A.M. for Trial.				gp
4/25/77	Before NEAHER, J.- Case called. Deft & Counsel present. Deft moves to suppress her prior records of conviction - motion argued and denied if the deft take the witness stand on her behalf - Trial ordered and begun. Juors selected. Number of jurors excused by the court - 3. Trial continued to 4/26/77 at 10:00 a.m.				
4.26.77	Voucher for Compensation for Expert Services filed and forwarded to Washington for Payment.				gp
4/26/77	Application for writ of habeas corpus ret & filed for Steven Hyatt unexecuted.JLJ				
4.26.77	Before Neaheer, J.- Case Called. Deft. & Counsel present. Trial resumed. Jury sworn. Govt. opens. Deft. waives opening statements. Trial continued to 4.27.77 at 10:30 A.M.				gp
4-27-77	Before Neaheer, J - case called - trial resumed - deft present with attys Katowitz & Courtney Wiltshire - trial contd to May 2, 1977 .				
5/2/77	Before Neaheer, J-case called-deft Andre continues to be ill-deft Hyatt not present-deft counsel Wiltshire & Katowitz present-trial contd to 5/3/77.JLJ				
5/3/77	Before Neaheer, J-case called-deft & counsel present trial resumed-govt rests-Deft moves for a judgment of acquittal-motion denied-trial contd to 5/4/77.JLJ				
5-4-77	Before NEAHER, J - case called - trial resumed - deft rests - Jury retires to deliberate - trial contd to May 5, 1977 at 10: am. rs				
5-5-77	Voucher for expert services filed and forwarded for payment.rs				
5-5-77	Before Neaheer, J - case called - deft & counsel present. trial resumed - Jury resumes deliberation - Jury returns with a verdict of guilty as to the 15 counts in 77 CR 17(S) Jury discharged. Trial concluded - vail contd- adjd without date for sentence. rs.				
5-5-77	By Neaheer, J- Order of sustenance filed (Lunch)				
5-5-77	Motion to suppress filed (received from Chambers)				

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

HYATT, Steven

77
Yr.

17
Docket No.

1
Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
5.24.77	Stenographer's Transcript dated May 5th, 1977 filed				gp
5.24.77	Stenographer's Transcript dated May 4th, 1977 filed				gp
5.24.77	Stenographer's Transcript dated April 22nd, 1977 filed				gp
5.24.77	Stenographer's Transcript dated April 25th, 1977 filed				gp
5.24.77	Stenographer's Transcript dated April 26th, 1977 filed				gp
5.24.77	Stenographer's Transcript dated April 27th, 1977 filed				gp
5.24.77	Stenographer's Transcript dated May 2nd, 1977 filed				gp
5.24.77	Stenographer's Transcript dated May 3rd, 1977 filed				gp
5.24.77	Voucher for Compensation for Expert Services filed and forwarded to Washington for Payment.				gp
7/1/77	Before Neaheer, J-case called deft & atty present- deft is sentenced to imprisonment for 18 months on each count 1-5 and 7-15 the sentence to run concurrently- deft is advised of his right to appeal in forma pauperis-financial affidavit of deft submitted clerk to file notice of appeal-bail contd pending appeal-on motion of AUSA Teitler-underlying information is dismissed.				
7/1/77	Judgment * commitment filed, Certified copies to Marshall & probation.jlj				
7/1/77	Notice of appeal filed. Certified copies of docket entries mailed to Gov. Another parties notified.jlj				
7/1/77	Certified copy of docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.jlj				
7/1/77	Financial affidavit of deft filed.jlj				
7-20-77	Scheduling order filed that the record be docketed on or before Aug. 22 2, 1977.				

A TRUE COPY ATTEST
8/2/77
LEWIS ORGEL CLERK
BY *[Signature]* DEPUTY CLERK

TRP:SAT:mb
F.#771,201

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
FEB 18 1977
10 AM

----- X
UNITED STATES OF AMERICA

SUPERSEDING

-against-

INDICTMENT

STEVEN HYATT and
LINDA ANDRE,

Cr. No. 77 CR 17(S)
(T. 18, U.S.C., §§495,
1708, and 2)

Defendant.
----- X

THE GRAND JURY CHARGES:

COUNTS ONE THROUGH FIVE

On or about the 16th day of December, 1976, within the Eastern District of New York, the defendants, STEVEN HYATT and LINDA ANDRE, with intent to defraud the United States, did utter and publish as true forged United States Treasury Checks, including, among others, the following, upon which each of the names of the respective payees as hereinafter set forth had been forged, the defendants, STEVEN HYATT and LINDA ANDRE, knowing the payees' names to have been forged. (Title 18, United States Code, Sections 495 and 2).

<u>COUNT</u>	<u>CHECK NO.</u>	<u>DATE OF CHECK</u>	<u>PAYEE</u>	<u>AMOUNT</u>
1.	35,391,547	12-1-76	Florence Corcoran	\$100.85
2.	35,391,606	12-1-76	Maria Lora	\$228.65
3.	35,392,310	12-1-76	Herve Joseph	\$120.05
4.	96,120,768	12-1-76	Charles Brumont	\$228.65
5.	35,391,634	12-1-76	Geneveve Robinson	\$228.65

COUNTS SIX THROUGH FIFTEEN

B
On or about the 16th day of December, 1976, within the Eastern District of New York, the defendants, STEVEN HYATT and LINDA ANDRE, did knowingly, wilfully, and unlawfully have in their possession United States Treasury Checks stolen from the United States mails, including, among others, the United States Treasury Checks hereinafter set forth, which were the contents of stolen United States mail, the defendants, STEVEN HYATT and LINDA ANDRE, knowing the same to have been so stolen. (Title 18, United States Code, Sections 1708 and 2).

<u>COUNT</u>	<u>CHECK NO.</u>	<u>DATE OF CHECK</u>	<u>PAYEE</u>	<u>AMOUNT</u>
6	35,391,547	12-1-76	Florence Corcoran	\$100.85
7.	35,391,606	12-1-76	Maria Lora	\$228.65
8.	35,392,310	12-1-76	Herve Joseph	\$120.05
9.	96,120,768	12-1-76	Charles Brumont	\$228.65
10.	35,391,634	12-1-76	Geneveve Robinson	\$228.65
11.	35,392,005	12-1-76	Cecilia Martinez	\$175.98
12.	35,391,998	12-1-76	Julia Morales	\$163.87
13.	35,392,013	12-1-76	Maria Pagan for Edwin Morales	\$152.58
14.	21,237,325	12-1-76	F. P. Willerford	\$106.00
15.	35,392,141	12-1-76	Mary Carter	\$ 68.15

A TRUE BILL

Sedley W. McKay
FOREMAN

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

1
2 THE COURT: Now members of the jury:

3 We finally have reached the stage of trial
4 where you are about to undertake your final function
5 as jurors. Your duty is a serious and important
6 one. In performing it you actively share with the
7 Court the responsibility of administering justice
8 according to law and the evidence in the case. Your
9 oath as jurors obliges you to discharge this final
10 task in an attitude of complete fairness and im-
11 partiality -- and, as was emphasized by me when you
12 were selected as jurors -- without bias or prejudice,
13 for or against the Government or the defendant as
14 parties to this controversy.

15 The case is important to the Government, since
16 the enforcement of the criminal law is of prime
17 importance to the welfare of the community.

18 Obviously, it is equally important to the
19 defendant, who is charged with a serious crime and
20 has the right to receive a fundamentally fair trial --
21 the community has an interest in that, too.

22 Let me add:

23 The fact that the Government is a part entitled
24 it to no grater consideration than that accorded to
25 any other party to a litigation.

By the same token, it is entitled to no less consideration.'

All parties, Government and individuals alike stand as equals before the Bar of Justice.

Your final role is to decide and pass upon the fact issues in the case.

You are the sole and exclusive judges of the facts.

You determine the weight of the evidence;

You appraise the credibility of the witnesses;

You draw the reasonable inferences from the evidence;

You resolve such conflicts as there may be in the evidence.

I shall later refer to how you determine the credibility of witnesses.

My final function is to instruct you as to the law, and it is your duty to accept these instructions as to the law and to apply them to the facts as you may find them.

(Continued on next page)

Charge of the Court

JB/ffe

5pm/1

1
2 With respect to any fact matter, it is your
3 recollection, and yours alone that governs.

4 As I have already told you, anything that counsel,
5 either for the Government or for the defense may have
6 said with respect to matters in evidence, whether
7 during the trial, in a question, in argument, or in
8 summation, is not to be substituted for your own
9 recollection of the evidence.

10 So, too, anything the Court may have said during
11 the trial, or may refer to during the course of these
12 instructions, as to any matter in evidence, is not to
13 be taken in lieu of your own recollection.

14 There are certain principles of law which apply
15 in every criminal case, and to which I made reference
16 and emphasized at the time of your selection as jurors.

17 I repeat them now.

18 The indictment is merely an accusation - a charge.
19 It is no evidence or proof of the defendant's guilt.

20 The defendant on trial has pleaded not guilty.
21 Thus, the Government has the burden of proving the
22 charges against the defendant beyond a reasonable
23 doubt. He does not have to prove his innocence. On
24 the contrary, he is presumed to be innocent of the
25 accusations contained in the indictment.

Charge of the Court

This presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the entire trial, is in his favor even as I instruct you now, and remains in his favor during the course of your deliberations in the jury room.

It is removed only if and when you are satisfied the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

The question that naturally comes up is, what is a reasonable doubt.

The words almost define themselves - that there is a doubt founded in reason and arising out of the evidence in the case, or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all of the evidence.

Reasonable doubt is a doubt which appeals to your reason; your judgment; your common sense and your experience. It is not caprice, whim, speculation, conjecture or suspicion; it is not an excuse to avoid the performance of an unpleasant duty; it is not sympathy for a defendant.

If, after a fair and impartial consideration of all the evidence, you can, candidly and honestly, say you are not satisfied of the guilt of a defendant, that

1
2 you do not have an abiding conviction of his guilt,
3 in sum, if you have such a doubt as would cause you,
4 as prudent persons, to hesitate before acting in matters
5 of importance to yourselves, then you have a reasonable
6 doubt, and in that circumstance it is your duty to
7 acquit.

8 On the other hand, if after such impartial and
9 fair consideration of all of the evidence, you can,
10 candidly and honestly, say you do have an abiding
11 conviction of the defendant's guilt, such a conviction
12 as you would be willing to act upon, in important and
13 weighty matters in the personal affairs of your own
14 life, then you have no reasonable doubt, and under such
15 circumstances, it is your duty to convict.

16 One final word on this subject.

17 A reasonable doubt does not mean a positive
18 certainty, or beyond all possible doubt. If that were
19 the rule, few persons, however guilty they might be,
20 would be convicted. It is practically impossible for a
21 person to be absolutely and completely convinced of
22 any controverted fact, which by its nature is not
23 susceptible of mathematical certainty.

24 In consequence, the law in a criminal case is
25 that it is sufficient if the guilt of a defendant is

established beyond a reasonable doubt - not beyond all possible doubt.

Now, I remind you that in this case the fact that the co-defendant, Linda Andre, has not been present during the remaining days of this trial is not to enter into your deliberations in any way. You are to draw no inference for or against the Government, or for or against the defendant because of her absence.

Now, let us turn to the charges against the defendant on trial. I will read to you the indictment.

The Grand Jury charges in Counts 1 through 5 that on or about the 16th day of December, within the Eastern District of New York, the defendant, Steven Hyatt, with intent to defraud the United States, did utter and publish as true forged United States Treasury checks, including among others, the following, upon which each of the names of the respective payees as hereinafter set forth had been forged, the defendant, Steven Hyatt, knowing the payees' names to have been forged.

Then there follows a listing, Counts 1, 2, 3, 4, 5, itemizing the check by number, date, payee and amount.

Now, Counts 6 through 15 state that on or about the 16th day of December, 1976, within the Eastern

District of New York, the defendant, Steven Hyatt, did knowing, wilfully and unlawfully have in his possession United States Treasury checks stolen from the United States mails, including, among others, United States Treasury checks hereinafter set forth, which were the contents of stolen United States Mail, the defendant, Steven Hyatt, knowing the same to be so stolen.

And then there follows a listing of Counts 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 with an itemization of check number, date of check, payee and amount for each one of them.

Now, in short, the indictment charges the defendant with a series of offenses, each one based upon an individual Treasury check. These fall into two separate categories as follows:

Counts 1 through 5 charge the defendant with placing or offering to place in circulation five checks bearing forged endorsements, with intent to defraud the United States.

Counts 6 through 15 charge the defendant with knowingly, wilfully and unlawfully possessing 15 checks, including the five that had the forged endorsement on the back, which had been stolen from the United States Mail, knowing that they had been stolen.

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2 Each of these is a different offense from the
3 other. You understand that. One is an attempt,
4 offering to put them in circulation, and the other is
5 simply having them in your possession, knowing they
6 were stolen, when in fact they had been stolen from
7 the United States Mail.

8 Now, let's turn to the first series in the first
9 category, or placing or offering to place in circulation.

10 Three essential elements are required to be
11 proved beyond a reasonable doubt in order to establish
12 the offense of uttering and publishing charged in
13 Counts 1 through 5 of the indictment:

14 First: the act or acts of placing or offering
15 to place in circulation the United States Treasury
16 check described in Counts 1 through 5 of the indictment;

17 Second: doing such act or acts with knowledge
18 that the payees' endorsement on the reverse side or
19 back of the check was a forgery; and

20 Third: doing such act or acts wilfully, and
21 with the intent to defraud the United States.

22 Now, regarding the first element, it is not
23 necessary that the person to whom the defendant was
24 offering the checks was unaware of their true nature
25 and received them in good faith for value. If you

1
2 should find beyond a reasonable doubt that the
3 defendant was aware he was passing the checks to
4 someone who knew they were stolen or forged and was
5 acquiring them for the purpose of himself placing them
6 in circulation, that would satisfy the first element as
7 to the defendant on trial.

8 Now, regarding the second element, the issue of
9 knowledge, it is not necessary that the Government prove
10 to a certainty that the defendant knew the checks were
11 stolen or that the endorsements were forged. Although
12 guilty knowledge cannot be established by establishing
13 merely negligence or even foolishness on the part of a
14 defendant, such knowledge is established if the defendant
15 was aware of a high probability that the checks were
16 stolen and the endorsement forged, unless the defendant
17 actually believed they were not stolen and the endorse-
18 ments were not forged.

19 And in this connection you will bear in mind
20 the evidence with regard to the circumstances under
21 which the defendant obtained the checks from the man
22 called Bunny.

23 In addition, the element of knowledge may be
24 satisfied by proof that the defendant closed his eyes
25 to what otherwise would have been obvious to him.

1
2 Thus if you should find beyond a reasonable doubt that
3 the defendant acted with reckless disregard of whether
4 the checks were stolen and endorsements forged and
5 with a conscious purpose to avoid learning the truth,
6 the requirement of knowledge would be satisfied, unless
7 the defendant actually believed that the checks were
8 not stolen and that the endorsements were not forged.

9 So much for uttering and publishing.

10 Now we come to the second category, the crime of
11 possession of checks that had been stolen from the
12 mail.

13 In order to convict the defendant on the charges
14 of possession of checks stolen from the mail, the
15 Government must establish beyond a reasonable doubt:

16 First: that the particular checks referred to
17 in the indictment were deposited in and sent through
18 the mails;

19 Second: that the checks were stolen, taken,
20 embezzled or extracted from the mail;

21 Third: that the defendant later had the checks
22 in his possession:

23 Fourth: that at the time of his possession,
24 the defendant knew the checks had been stolen. It is
25 not necessary that the defendant knew that the checks

Charge of the Court

were stolen from the mails. It is only necessary that the defendant knew they were stolen.

Now, what do we mean by stolen from the mail?

A check which had been properly mailed and never received by the addressee, but found in quite improper and misusing hands, can be found to have been stolen from the mails in the absence of any other explanation being offered.

In short, you may make common sense inferences from the proven facts.

(Continued next page)

1
2 Now, so much for possession. And we come now to
3 what may be considered the real crucial issue in this
4 case.

5 The defendant asserts that he was the victim of
6 entrapment as to the crimes charged in the indictment.

7 The word "entrapment" is a legal term. It has
8 a technical meaning which is different from that of
9 popular speech or ordinary usage. Therefore, I must
10 explain the word and meaning of "entrapment" as it is
11 used in the law.

12 Where a person has no previous intent or purpose
13 to violate the law, but is induced or persuaded by
14 law enforcement offices or their agents to commit a
15 crime, he is a victim of entrapment, and the law as a
16 matter of policy forbids his conviction in such a case.

17 On the other hand, where a person already has
18 the readiness and willingness to break the law, the
19 mere fact that Government agents provide what appears
20 to be a favorable opportunity is not entrapment. For
21 example, when the Government suspects that a person
22 is engaged in the illegal sale of stolen Treasury
23 checks, it is not entrapment for a Government agent to
24 pretend to be someone else and to offer, either
25 directly or through an informer or other decoy, to

Charge of the Court

purchase checks from such suspected person.

The defense of entrapment is based upon the policy that law enforcement agencies cannot lead innocent people into committing a crime simply in order to prosecute them. But a line must be drawn between the entrapment of the unwary innocent and the snare for the unwary criminal.

The function of law enforcement is not only the prevention of crime but also the detection and apprehension of criminals. Such detection and apprehension may take various forms. For example, law enforcement agencies often used undercover investigators or informants in attempting to enforce the law.

In addition, such agencies must often instruct individuals, such as Inspector Wilson, to participate in a crime. Stealth and strategy are often necessary weapons in the detection and prosecution of crime. Whether or not you personally agree with the policy of using such methods is not an issue for you to consider. Were it not for the use of such methods, many crimes would go undetected and unprosecuted.

Certain crimes have a common feature which requires the use of such means of detection. These are the crimes that are committed privately, such as the

1
2 purchase or sale of stolen Treasury checks which make
3 normal detection virtually impossible.

4 The question of entrapment involves two issues
5 and should be considered by you in two stages. It is
6 important that you realize this during your deliberations.

7 The first issue for you to consider is whether
8 the defendant was induced to commit the crime by anyone
9 acting for the Government. You must first ask, did
10 Inspector Wilson himself, or by using the informant,
11 who has been identified here as the person named Jimmy,
12 to initiate the criminal transaction involved in this
13 case or, on the other hand, did he merely provide a
14 favorable opportunity for the commission of the crime
15 by the defendant.

16 The defendant must adduce some evidence that
17 Inspector Wilson directly or indirectly initiated the
18 illegal conduct as opposed to merely providing the
19 defendant with a timely or convenient opening for his
20 own criminal conduct. If you do not find such induce-
21 ment by the Government, there can be no entrapment
22 regardless of the defendant's state of mind.

23 If you are satisfied that the Government merely
24 afforded the defendant an opportunity but did not
25 induce him to commit the crimes charged, then there can

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be no entrapment as a matter of law.

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If, however, you should find that the defendant has produced some evidence that the Government induced the criminal transaction, then you must consider the second issue, that is, did the Government prove beyond a reasonable doubt that the inducement was not the cause of the crime, but, rather, that the defendant was ready and willing to commit the crime.

You must pass upon the second question because the defense of entrapment is not simply that the Government induced the criminal transaction. You will recall that I explained that the defense of entrapment is based on the policy that law enforcement agencies cannot prosecute crime by leading innocent people into committing a crime. This policy creates a distinction between the unwary innocent and the unwary criminal. Accordingly, even if you do find that Inspector Wilson induced the criminal transaction charged in the indictment, there can nevertheless be no entrapment if the Government proves beyond a reasonable doubt that the defendant was in fact an unwary criminal, that is, he was ready and willing to seize upon the opportunity afforded by the Government to commit the crime.

If a person has a readiness and willingness to

1 break the law, the mere fact that a Government agent
2 provides a favorable opportunity for the commission of
3 a crime is no defense. In such a case, the Government
4 has certainly not lead an innocent person astray, but
5 has only provided the means by which the defendant may
6 realize his already preexisting purpose. In such a
7 situation, the inducement by the Government, which
8 brought about the actual offense, does no more than
9 provide the defendant with what appears to be a
10 favorable or timely or convenient opening or opportunity
11 for the criminal conduct in which that defendant was
12 willing to engage.
13

14 You may consider, in determining whether the
15 defendant acted with guilty knowledge or intent, the
16 fact, if you find it true, that the defendant engaged
17 in other transactions similar to those charged in the
18 indictment.

19 The fact, however, that the accused may have
20 committed another offense at some time, is not any
21 evidence or proof whatever that at another time, the
22 accused committed the offenses charged in the indictment
23 even though both offenses are of a light nature.
24 Evidence as to an alleged prior or later offense of a
25 like nature may not be considered by the jury in

1
2 determining whether the accused did the act charged in
3 the indictment. Nor may such evidence be considered
4 for any other purpose whatsoever, unless the jury first
5 finds that other evidence in the case, standing alone,
6 establishes beyond a reasonable doubt, that the accused
7 did the acts charged in the indictment, leaving aside
8 only the question of whether the accused did it
9 knowingly, intentionally and wilfully.

10 If you should find beyond a reasonable doubt
11 from the evidence in the case that the accused did the
12 act charged in the indictment, then you may consider
13 the evidence as to an alleged earlier offense of a like
14 nature, in determining the state of mind, knowledge,
15 intent or willfulness with which the accused did the
16 act charged in the indictment.

17 Now, a defendant may be proven guilty by either
18 direct or circumstantial evidence. Direct evidence is
19 the testimony of one who asserts actual knowledge of a
20 fact, that which comes to him by virtue of his senses,
21 such as an eye witness. Circumstantial evidence is
22 proof of a chain of facts and circumstances indicating
23 the guilt or innocence of a defendant; where facts are
24 established from which, in terms of common experience,
25 one may logically infer other facts that are sought to

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1
2 be established.

3 As a common, homely example often given to
4 demonstrate what we mean by circumstantial evidence,
5 you are here in this windowless courtroom. Perhaps
6 when you went to the courthouse today the sun was
7 shining and it was a fair day outside. You haven't had
8 an opportunity to see what has happened since. Someone
9 comes walking through the door and has what appears to
10 be water on his coat or jacket. You might immediately
11 conclude from that fact another fact, namely, that the
12 weather outside had changed. But if you were cautious,
13 you might also bear in mind that that water may have
14 been sprayed off the roof or something.

15 However, if he is carrying in his hand a dripping
16 umbrella, that further fact might then persuade you
17 that the weather had indeed changed.

18 You see what I mean? That it's a question of
19 how many circumstantial facts it takes to prompt an
20 ordinarily logical mind to reach a conclusion as to
21 whether another fact exists or not.

22
23 (Continued next page)
24
25



Charge

1
2 into consideration the age, sex, training, education,
2 3 occupation and physical and mental condition of the
4 defendant and the treatment given the defendant while
5 in custody or while under interrogation as shown by
6 the evidence in the case.

7 Also, all other circumstances in evidence
8 surrounding the making of the statement, including
9 whether before the statement was made, the defendant
10 knew or had been told and understood that he was not
11 under an obligation or required to make the statement
12 claimed to have been made by him; that any statement
13 which might be made could be used against him in
14 court; that the defendant was entitled to assistance
15 of counsel before making any statement, either orally
16 or in writing and that if the defendant was without
17 money or means to retain counsel of his own choice an
18 attorney would be appointed to advise him free of cost
19 or obligation.

20 If the evidence in the case does not convince
21 you beyond a reasonable doubt that the admissions or
22 confession was made intentionally and voluntarily, you
23 should disregard it entirely. On the other hand, if
24 the evidence in the case does show beyond a reasonable
25 doubt that an admission or confession was in fact

Charge

1
2 voluntarily and intentionally made by the defendant,
3 you may consider it as evidence in the case against
4 him.

5 The evidence in this case consists of the
6 testimony of all witnesses except that which I have
7 instructed you to disregard, all exhibits received in
8 evidence and all facts which counsel stipulated may be
9 considered by you. As I recall, there were some of the
10 witnesses, it was stipulated some of the witnesses who
11 didn't appear in court but were supposed to be the
12 recipients of the checks would have testified similarly
13 to those you had heard from the stand.

14 All evidence, whether or not I have referred to
15 it or counsel have mentioned it in their summations is
16 important and must be considered by you.

17 If perchance any reference to testimony does
18 not agree with your recollection -- and I have stated
19 this before -- you are to disregard such reference and
20 I emphasize this as strongly as I can. Always it is
21 your recollection and yours alone that governs and you
22 must unhesitatingly reject any statement as to a fact,
23 whether made by the Court or counsel which does not
24 accord with your own recollection of the evidence.

25 Bear in mind that guilt is personal. The guilt

Charge

1
2 or innocence of the defendant on trial must be determined
3 solely upon the evidence presented against him or by the
4 lack of evidence.

5 It must be apparent to you that the versions
6 of the Government and the Defense are in some conflict
7 on key points and that critical issues of fact and
8 credibility are raised. You are called upon to decide
9 the fact issues here.

10 How do you decide this? Now I think you under-
11 stand why at the start of the trial I suggested it would be
12 desirable and important for you not only to listen but
13 to look at the witnesses as they testified. Your
14 determination of the issue of credibility very largely
15 must depend upon the impression that a witness made upon
16 you as to whether or not he was telling the truth or
17 giving you an accurate version of what occurred.

18 I often say to jurors when you walk in the door
19 of the courtroom and sit in the jury box while a trial
20 is going on and later on when you are deliberating in
21 the jury room, you have your common sense, your good
22 judgment and your experience with you. You decide
23 whether or not a witness was straightforward and truthful,
24 whether he attempted to conceal anything, whether he
25 has a motive to testify falsely, whether there is any

Charge

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2 reason why he might color his testimony. In other
3 words, what you try to do, to use the vernacular, is
4 to size a person up just as you would do, as I have
5 said before, in any important matter where you are
6 undertaking to determine whether or not a person is
7 truthful, candid and straightforward.

8 In passing upon the credibility of a witness,
9 you may take into account inconsistencies or contra-
10 dictions as to material matters in his own testimony
11 or any conflict with that of another witness. A
12 witness, however, may be inaccurate, contradictory or
13 even untruthful in respects and, yet, be entirely
14 credible in the essentials of his testimony. The ultimate
15 question for you to decide in passing upon credibility
16 is, did the witness tell the truth here before you as
17 to essential matters?

18 The fact that some Government witnesses were
19 Government agents does not entitle their testimony to
20 any greater weight of consideration than that offered
21 to any other witness in the case. You will evaluate
22 their credibility the same way you do that of any other
23 witness. If you find that any witness -- and this
24 applies alike to Government and Defense -- willfully
25 testified falsely as to any material fact, you have a

Charge

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2 right to disregard the testimony of that witness in its
3 entirety or you may accept that part or portion which
4 commends itself to your belief as credible.

5 The law permits but does not require a defendant
6 to testify in his own behalf. The defendant, Steven
7 Hyatt, has taken the witness stand. Obviously, the
8 defendant has a deep, personal interest in the result
9 of his prosecution. Interest creates a motive for
10 false testimony. In appraising his credibility you may
11 take that fact into consideration; however, it by no
12 means follows that simply because a person has a vital
13 interest in the end result that he is not capable of
14 telling a truthful, candid and straightforward story.
15 It is for you to decide to what extent, if at all, a
16 defendant's interest has effected or colored his testi-
17 mony.

18 During the course of the trial the attorneys
19 at various times objected to certain questions, moved
20 to strike answers and taken other procedural positions
21 before you. These are matters of technical procedure
22 that are the proper concern of the attorneys and the
23 Court and should not concern you as jurors. I instruct
24 you that you are not to draw any inferences from the
25 fact the attorneys have made objections or motions before

Charge

you during the trial.

The Government to prevail in this case must prove the essential elements by the required degree of proof as already explained in these instructions. If it succeeds, your verdict should be guilty. If it fails it should be not guilty. The verdict in either instance must be unanimous.

Your function as to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the bases of such evidence and these instructions. Under your oath as jurors, as I mentioned previously, you cannot allow a consideration of the sentence which may be imposed upon a defendant if he is convicted to enter into your deliberations or to influence your verdict in any way. Your duty is to decide the case solely and only upon the evidence. In the event of a conviction, the duty of imposing sentence rests upon the Court.

During your deliberations each juror is entitled to his or her own opinion, but each should, however, exchange views with fellow jurors. That is the very purpose of jury deliberation, to discuss and to consider the evidence, to listen to the arguments of fellow jurors, to present your individual views, to consult with

Charge

one another and to reach an agreement based solely and wholly on the evidence if you can do so without violence to your own individual judgment.

Each one must decide the case for himself or herself after consideration with his or her fellow jurors, but you should not hesitate to change that opinion which, after discussion with your fellow jurors, appears erroneous. However, if after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from others, you are not to yield your judgment simply because you are outnumbered or outweighed. Your final vote must reflect your conscientious view as to how the issues should be decided.

The charge here is most serious. The just determination of this case is important to the public. It is equally important to the defendant. Under your oath as jurors, you must decide this case without fear or favor and solely as I have stated any number of times in accordance with the evidence and the law.

If the Government has failed to carry its' burden of proof, your sworn duty is to acquit. If it has carried its' burden as to the defendant, you must not flinch from your sworn duty. You must convict.

Charge

At this time, members of the jury, my first task is to separate the two alternate jurors from the rest of you since only 12 must deliberate and I do that now with my thanks for your patient attention, through not only the days of the trial but through the days of interruption through which this case unfortunately became plagued. The Clerk will give you your cards and you may check in downstairs. I guess this finishes your term of jury service. I hope you have found it rewarding not only in the small stipend Uncle Sam pays but in the interest of actually participating in the administration of justice in a court of law. Thank you and good afternoon.

(Alternates are excused)

(Continued on next page)

2 THE COURT: (Continued.)

3 As you know, there are certain exhibits which
4 have been admitted into evidence. These will be
5 available for you to see. It would appear that all
6 the testimony here -- I think all the testimony has
7 been transcribed, has it not?

8 MR. KATOWITZ: Yes, i has, your Honor.

9 THE COURT: So, should it become necessary
10 during the course of the deliberations to have any
11 portions of the testimony read back to you, it is
12 available for that purpose. In that connection, I
13 suggest this: You have been listening to the evidence
14 in this case. You have heard the arguments of counsel.
15 I suggest -- I do not direct or command -- that you
16 begin exchanging views with one another and that you
17 defer your request to see exhibits or to ask for
18 testimony to be read back only when it is necessary
19 to resolve something that really is of importance to a
20 point that you are discussing and there may be some
21 disagreement among you as to what was said, or what
22 the particular exhibit showed or otherwise evidenced.

23 I say that only to help you focus your atten-
24 tion on your primary purpose of deliberating and
25 exchanging views with one another and reaching some

2 common conclusions, one way or the other, about how
3 this case should be decided on the evidence and the
4 law.

5 In accordance with custom, Juror Number One
6 will be your foreperson. The practice here is to
7 provide you with pencil and paper inside should it
8 be necessary to communicate with the Court. The Fore-
9 person will write a note, give it to the Marshal, who
10 will be guarding your door. That will be delivered
11 to the Court. I will convene counsel and we will
12 endeavor to respond to your question, whatever it may
13 be.

14 In my opinion, it is not so late that you
15 should not be able to begin your deliberations immed-
16 iately. Depending upon the progress you may or may
17 not make, it is up to you to decide whether or not to
18 suspend for the day and come back tomorrow. That is
19 your decision. I am not attempting to influence you
20 in any way. Counsel and the Court will remain as
21 long as you desire to remain.

22 Now, I am going to swear the Marshal.

23 (Marshal sworn by the Court.)

24 THE COURT: When you have reached a verdict,
25 you simply write that; that you have reached a verdict,

CHARGE OF THE COURT

without stating what it is. It will be delivered to the Court and you will be brought into the courtroom.

For about five minutes I am going to ask that you just retire and not begin to deliberate until I give counsel a final opportunity, now that they have heard my charge, and you too, I hope; to give them the opportunity to let me know whether I have mis-spoken anything or whether anything should be corrected. In about five minutes the Marshal will tell you to go ahead, or I will bring you back in for some more instructions.

(Jury leaves courtroom.)

THE COURT: Gentlemen, any exceptions?

MR. TEITLER: Yes, your Honor. The Government would ask your Honor that a charge be given in accordance with United States against Steinberg.

THE COURT: Sorry?

MR. TEITLER: Some charge be given in accordance with United States against Steinberg, that's the Second Circuit case, most recently decided on the law of entrapment. I'm afraid, your Honor, that the Government's position is that a fair reading of your charge would lead to no other conclusion other than that if the defense raises a claim of entrapment or a

4 1 claim that there is possibly some evidence that the
2 charge was initiated by Government conduct, the burden
3 shifts to the Government to prove something beyond a
4 reasonable doubt. We would submit that the Court did
5 not recite to the jury by what standard, by the
6 sufficiency of the evidence, that the defendant had
7 to produce in order to trigger the Government's burden
8 of establishing proof beyond a reasonable doubt.

9 Secondly, your Honor, I mentioned that you were
10 going to make a distinction between the uttering
11 counts, the 1708 counts and the 472 counts which were
12 to entrapment. Your Honor had said there would be no
13 entrapment as to the possession.

14 THE COURT: Let me say that while I did make
15 that statment in our -- in normal discussion earlier,
16 I was reminded by the summation that it is the defense
17 position and I cannot say there is not some evidence
18 to support it, but the reason he went to get the
19 checks was to carry out the urging of his friend.
20 Again, the question is whether he possessed them then
21 without regard to going through with the rest of the
22 deal.

23 MR. TEITLER: I wanted to point it out to your
24 Honor. I didn't know what triggered your opinion to
25 change on that.

5 1 In addition, your Honor, it's the Government's
2 position that the charge specifically, your Honor,
3 the claim by Mr. Katowitz during his summation was
4 that Jimmy trapped the defendant. Your Honor, during
5 the course of his charge, referred to Inspector Wilson
6 as being the claimed mover in the entrapment, and,
7 your Honor, based upon a fair reading of your Honor's
8 charge, I would submit that there was no distinction,
9 at least to my understanding, your Honor, of the en-
10 trapment vis a vis Inspector Wilson when he acted in
11 an undercover capacity, and the entrapment that is
12 claimed by the defense in this case.

13 I do recognize your Honor spent a few sentences
14 saying to the jury something to the effect the actual
15 transaction itself, with respect to Wilson may not be
16 entrapment, but I believe if your Honor might review that
17 portion of the charge, I do not think in any way, Judge,
18 it was clear that the deal with respect to Wilson, the
19 actual buy, so to speak, cannot be entrapment. Entrap-
20 ment must be considered by the informant. It had to
21 have occurred prior to that very moment. I was very
22 confused by that portion of the charge, Judge.
23 Maybe it's my lack of understanding or mishearing the
24 charge, but I will just ask you to review that in your
25 own mind to determine whether or not you reached the

6 1 same conclusion I did.

2 As another proposition, Judge, I would ask --

3 THE COURT: Are you referring to that part
4 where I said, "The defendant must produce some evi-
5 dence that Inspector Wilson directly or indirectly
6 initiated --"? Is that the portion?

7 MR. TEITLER: That's the portion I'm referring
8 to with respect to Steinberg. I think a fair inter-
9 pretation of that charge, right after that, I believe,
10 your Honor went into that the Government has a burden
11 beyond a reasonable doubt.

12 THE COURT: If you find a defendant has pro-
13 duced some evidence, the Government induced the
14 criminal transaction, then you must consider the
15 second issue, that is, did the Government prove beyond
16 a reasonable doubt that the inducement was not the
17 cause of the crime but rather, the defendant was --

18 MR. TEITLER: Your Honor --

19 THE COURT: You're saying that charge is not
20 in accord with the ruling in this Circuit?

21 MR. TEITLER: No.

22 THE COURT: If you're not saying that, what
23 are you bothering me for?

24 MR. TEITLER: That's what I am saying.

25 THE COURT: You're saying the Second Circuit

7 1 has changed the rule that persisted since Judge Hand
2 wrote it about 50 years ago.

3 MR. TEITLER: I'm saying, according, as I
4 understand your charge, once the defendant introduces
5 any evidence, that triggers a burden of proof beyond
6 a reasonable doubt to the Government. I say that
7 that is not the state of the law --

8 THE COURT: I didn't say anything about trig-
9 gering. I say I told them they have to consider this
10 in two stages. First, they have to consider the
11 question of whether or not there was inducement. If
12 there was no inducement, that's the end of it. If
13 they find that there is some evidence, satisfactory
14 to them, of inducement, then they can consider the
15 second issue, did the Government -- in other words,
16 really, it's another way of saying are they satisfied
17 by evidence beyond a reasonable doubt that the induce-
18 ment was not the cause of the crime; that he would have
19 done it anyway.

20 MR. TEITLER: You didn't say by evidence beyond
21 a reasonable doubt.

22 THE COURT: That is, did the Government prove
23 beyond a reasonable doubt. The Government's burden
24 of proof beyond a reasonable doubt covers the entire
25 case. The Government can never walk away from that.

8 1 MR. TEITLER: No, but we have the burden of
2 going forward on the entrapment issue once evidence
3 is elicited.

4 THE COURT: Yes, in this case going forward is
5 unrealistic. There wasn't the -- the proof was largely
6 based upon the direct and cross-examination of Govern-
7 ment witnesses and upon the defendant's own testimony
8 on the stand. Let's not play around with a case that
9 we don't have here.

10 MR. TEITLER: I'm not trying to play around,
11 Judge.

12 That's it, your Honor, the Government has no
13 other -- yes, there is one more thing, just to go back
14 to what you said earlier. Am I to understand that no
15 mention whatsoever was the intention of the Court, that
16 you were not intending to say no inference can be
17 drawn against either party for their failure to call
18 Jimmy. Was it your intention to leave that out com-
19 pletely?

20 THE COURT: Yes, I finally decided to leave
21 that out completely.

22 MR. TEITLER: Fine.

23 THE COURT: I don't think it matters at all as
24 far as the case is concerned.

25 THE COURT: Mr. Katowitz?

9 1 MR. KATOWITZ: No objections.

2 THE COURT: Mr. Marshal, you can tell them to
3 go ahead.

4 MR. MARSHAL: Yes, sir.

5 MR. KATOWITZ: Your Honor, perhaps to save us
6 time and trouble later on, should the jurors want an
7 exhibit, we had agreed that one piece of 3500 material
8 and the agents' final report and also the draft of
9 that report would be redacted.

10 THE COURT: You better get that done. I
11 suppose that's the Government's job. You better get
12 a hold of Mr. Teitler.

13 I'm reminded there was to be some redacting
14 of exhibits. Can you, just in case --

15 MR. TEITLER: Your Honor, you're right.

16 THE COURT: We may get a note any minute asking
17 for those.

18 MR. KATOWITZ: If your Honor and Mr. Teitler
19 wish, I will be glad to take both documents back to
20 my office and --

21 MR. TEITLER: Fine. Mr. Katowitz has been very
22 helpful.

23 THE COURT: Only with the Government's permis-
24 sion. You better get a written disclaimer, though,
25 in case you get hit by a truck or something.

1 (At 5:00 p.m. a note from the jury was handed
2 to the Court.)

3 THE COURT: Mark that as Court's Exhibit 1.

4 THE CLERK: Jury note marked as Court's Exhibit 1.

5 (Another matter which was proceeding before the
6 Court was then continued.)

7 THE COURT: Excuse me just a minute, gentlemen.

8 Show them the note, I want you to start plowing
9 through the testimony here, the jury wants some testi-
10 mony read, that will save time.

11 Why don't you get the exhibits that they want,
12 too.

13 (At 5:15 p.m. the following took place.)

14 MR. TEITLER: Judge, the testimony is about 14
15 pages of direct examination.

16 THE COURT: Of direct examination?

17 MR. TEITLER: Yes.

18 THE COURT: How about the cross, it goes on at
19 some length?

20 MR. TEITLER: Yes, Judge.

21 MR. KATOWITZ: Well, your Honor, part of that
22 14 pages of direct involves a heavy side bar conference.
23 If your Honor will remember, that is not all testimony.

24 MR. TEITLER: That is true.

25 MR. KATOWITZ: Now on cross, well, we will go

1 into that now.

2 (At this point a 15 minute recess was taken.)

3 THE COURT: Well, I guess we had better bring
4 them in.

5 MR. TEITLER: Judge, on these statements, on the
6 warning and waiver statements, is that what they want?

7 THE COURT: I assume it is whatever they want.

8 MR. TEITLER: Well, with respect to her she has
9 a written statement and then there are two warning and
10 waivers, one in her name.

11 THE COURT: Wasn't there something read with
12 respect to him?

13 MR. TEITLER: We have his written statement plus
14 his written statement of a waiver and warning.

15 THE COURT: Wasn't there a statement written
16 out?

17 MR. TEITLER: Yes, there was.

18 THE COURT: Where is it?

19 All right, bring the jury in.

20 (At 5:25 p.m. the jury took its place in the
21 jury box.)

22 THE COURT: I ask that you come in.

23 Members of the jury:

24 Just to make sure that I understand clearly how
25 much of the testimony of Steven Hyatt you wish to have

1 reread to you, as I indicated I would hope that there
2 would be some portion that you indicate, in other words
3 do you want to have it read in totality?

4 THE FOREPERSON: I didn't know it had to be
5 read.

6 THE COURT: Oh, yes, you can't have testimony,
7 it has to be read from the transcript.

8 Is there any particular portion of it or do you
9 want it read in total?

10 THE FOREPERSON: The part that says how long he
11 had the checks.

12 THE COURT: How he had the checks?

13 THE FOREPERSON: No, how long he had the checks.

14 THE COURT: How long he had the checks.

15 What else?

16 THE FOREPERSON: How many times he was asked by
17 Bunny to deposit these checks.

18 Also the first meeting with Jimmy.

19 THE COURT: Well, do you have those?

20 MR. TEITLER: Well, your Honor, I believe it
21 will take a few moments.

22 THE COURT: A few moments?

23 MR. TEITLER: I will have to confer with counsel.

24 THE COURT: All right then, suppose I do this,
25 you asked for certain exhibits which I believe we have

1 here, these are all the statements of Hyatt and some
2 of them have to do with the Waiver of Rights. Now you
3 want to see those and the one of Linda Andre, they are
4 in evidence.

5 THE FOREPERSON: No, just the statement.

6 Just her statement.

7 THE COURT: The statement?

8 THE FOREPERSON: Just her statement.

9 THE COURT: That is something in writing?

10 THE FOREPERSON: Yes.

11 And the identification of Oscar Davis.

12 THE COURT: And the identification of Oscar
13 Davis, the identification of Oscar Davis, yes.

14 Now those initially, those things you may take
15 back while counsel picks out those sections of the
16 testimony.

17 (The jury then left the courtroom.)

18 THE COURT: Now, gentlemen, what is it exactly
19 the jury wants?

20 Perhaps a good idea would be if the Court
21 Reporter read what the foreperson said.

22 (The reporter then repeated the request of the
23 foreperson.)

24 THE COURT: Can you figure those out?

25 MR. KATOWITZ: Yes.

1 Your Honor, if I may, the first meeting with
2 Jimmy, the defendant's direct testimony would be on
3 page 306.

4 MR. TEITLER: Let us agree on the lines.

5 That is line 16?

6 MR. KATOWITZ: Yes.

7 MR. TEITLER: To line 25.

8 MR. KATOWITZ: So we agree on page 306, lines
9 16 through 25.

10 Is that correct?

11 MR. TEITLER: Yes.

12 MR. KATOWITZ: With respect to how long he had
13 the checks, I am a little confused, how long he had
14 the checks when?

15 THE COURT: We are talking now only about the
16 direct testimony?

17 MR. KATOWITZ: Yes.

18 Well, the testimony regarding Bunny and the
19 number of times he was asked by Bunny can be found on
20 page 308, starting with line 15.

21 Now that continues to 309, through page 309,
22 through page 310, the point where he stated he took the
23 checks to Bunny, "I took them back to him and I told
24 him that the bank told me they were too old. I never
25 took the checks to the bank."

1 MR. TEITLER: Judge, I have a little problem
2 with this, I am just on 308.

3 THE COURT: 308, line what, what is it?

4 MR. KATOWITZ: Yes, it is on page 308, line 15.

5 THE COURT: Line 15.

6 MR. KATOWITZ: You might want to start with
7 line 13,

8 "Question: Will you tell us what happened after
9 you met Jimmy the second time," and that continues
10 straight on down to 310, right down to the bottom of
11 line 25.

12 THE COURT: All right.

13 Now, what about the other one, how long he had
14 the checks.

15 MR. TEITLER: This is only the direct, I mean
16 there is cross-examination.

17 THE COURT: Yes, of course.

18 You are going to pick out the cross-examination
19 next so he will read both the direct and the cross on
20 those subjects.

21 Why don't flip through it quickly and see if
22 you can do that.

23 MR. TEITLER: You said on page 310, where do you
24 end?

25 THE COURT: He said the end of the page.

1 MR. KATOWITZ: The bottom of page 310.

2 Now, that is as to the number of times he was
3 asked by Bunny, I believe that is it.

4 THE COURT: How long he has the checks, what
5 about that?

6 MR. TEITLER: Well, he was asked some specific
7 questions on page 310:

8 "Question: Now, how long did you have those
9 checks?

10 "Answer: Three to four days."

11 THE COURT: Then that maybe covers it.

12 MR. TEITLER: Doesn't that cover it?

13 THE COURT: That covers it.

14 Now, there were three items, how many times he
15 was asked by Bunny to deposit the checks.

16 MR. KATOWITZ: Yes, to deposit them.

17 THE COURT: To deposit checks, that is right,
18 and that is in the same section beginning with 308.

19 Then how long he had the checks from Bunny,
20 that was the first question he put.

21 MR. KATOWITZ: All right, so we are agreed,
22 then.

23 THE COURT: That is in that same section.

24 Now you have to find the cross-examination on
25 that.

1 MR. TEITLER: I had a lengthy corss-examination,
2 your Honor.

3 THE COURT: It is lengthy?

4 MR. TEITLER: Yes, 80 pages.

5 THE COURT: Eighty pages?

6 Why don't you just try to flip through quickly
7 and see if you could find those topics.

8 MR. TEITLER: Yes, that is what I am doing.

9 THE COURT: Yes, and then we can look at them
10 more closely.

11 MR. TEITLER: There is something on page 352,
12 lines 6 through 10 when I asked him --

13 THE COURT: Just note down whatever you think it
14 is because I want you and counsel to agree.

15 Please try to do it as quickly as you can.

16 I'm afraid I must go into Chambers, Ralph, just
17 knock on the door and I will come out.

18 (Judge Neaher then left the courtroom.)

19 MR. TEITLER: Now on page 306 --

20 MR. KATOWITZ: Yes, 14 through 25.

21 MR. TEITLER: What is that relevant to?

22 MR. KATOWITZ: That is relevant to the first
23 meeting with Jerry.

24 All right?

25 MR. TEITLER: Yes.

1 Next.

2 MR. KATOWITZ: 308, line 13, start off with the
3 question --

4 MR. TEITLER: What is that, and that reads,
5 "Will you tell us what happened after you met Jimmy
6 the second time?"

7 MR. KATOWITZ: That is when he met Bunny.

8 MR. TEITLER: Line 13 on page 308 through 309
9 line --

10 MR. KATOWITZ: 308 line 13 to 310 line 25.

11 MR. TEITLER: Good.

12 Next?

13 Is that it with the direct?

14 MR. KATOWITZ: Now, the question as to when he
15 first met Jimmy, was that the third question?

16 Well, that is included in how long did he hold on
17 to the checks, that is included on page 310, lines 8
18 and 9, "How long did you have those checks?"

19 "Three or four days."

20 Now on cross-examination --

21 (At this point Judge Neaher entered the court-
22 room.)

23 THE COURT: Are you still working on it?

24 MR. KATOWITZ: We are just agreeing, we have
25 agreed on the direct testimony to be read back.

1 MR. TEITLER: Do they have a verdict?

2 THE COURT: No, I have another note, hurry up
3 and finish.

4 MR. KATOWITZ: With respect to cross-examination,
5 Mr. Teitler and I have agreed on page 369, line 9,
6 starting with the question, through line 17.

7 THE CLERK: Jury note marked as Court's Exhibit
8 No. 2.

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MR. TEITLER: Oh, on 360, Line 20 to 21.

MR. KATOWITZ: Yes, Page 360, Line 20 to 21.

THE COURT: Then on Page 369?

MR. TEITLER: I will dispute with respect to the deposit of checks on Pages 362 and 363 of the transcript. The question was how many times was he asked by Bunnie to deposit the checks, and the answer here on Page 362 starts on Line 20:

"Answer: I've never deposited checks --
I've never deposited checks into an account, and I wasn't about to deposit checks into an account."

It runs on.

THE COURT: Well, the question was really how many times was he asked by Bunnie to do so, not whether he did so, how many times was he asked by Bunnie to do so.

MR. KATOWITZ: I would really believe it was relevant.

THE COURT: I don't care as long as you agree.

MR. KATOWITZ: What Mr. Teitler seeks I think is irrelevant.

THE COURT: I don't know what to say about that, the question was how many times was he asked by Bunnie to deposit checks.

1 MR. TEITLER: Well, he says here, "I told
2 him from the beginning I wouldn't deposit checks
3 into my account."

4 MR. KATOWITZ: What page is that?

5 MR. TEITLER: Now I don't know whether we
6 can treat them at one time, I don't know, Judge.

7 THE COURT: I will simply repeat that wherever
8 he made a reference to being asked by Bunnie I would
9 expect that they would want to hear that, that is
10 whatever was said on the subject of depositing checks.

11 MR. TEITLER: That is on Page 362, Page 362,
12 Line 20 to 363 Line 15.

13 THE COURT: It seems to me that I heard
14 several references to it, that is what I think they
15 must have in mind.

16 MR. TEITLER: Now Page 369, Line 11 through --

17 MR. KATOWITZ: I think 369, Line 9, with the
18 question by Mr. Teitler:

19 "Tell us about the first time you met Jimmy?"

20 Then through Line 17, and then Page --

21 MR. TEITLER: Let me check that first, that
22 is the first meeting with Jimmy, and I would say it
23 continues, Judge, because the question tells about
24 the first.

25 THE COURT: What you counsel agree upon is

1 agreeable with me, it is fine with me.

2 MR. TEITLER: To 370 Line 9.

3 370, Line 9, if you can agree on that.

4 Do you consent to that?

5 MR. KATOWITZ: It is not really relevant.

6 MR. TEITLER: Well, I think it is, Page 369,
7 Line 11 through Page 370 to Line 9.

8 MR. KATOWITZ: All right.

9 Now Page 371, your Honor, and this is relating
10 to Bunnie where Hyatt said:

11 "He asked me would I put checks and count
12 it for him. I told him I won't."

13 It goes down to the next contact with Bunnie:

14 "My next contact with Bunnie was, I took the
15 checks back to him, tried to give them back to him.
16 He wouldn't take them back."

17 That completes it.

18 MR. TEITLER: What does that have to do with
19 it, what does the counting of the checks have to do
20 with it, it has absolutely nothing to do with the
21 deposits of checks.

22 THE COURT: I think I would stay within the
23 confines of what the jury wants.

24 MR. TEITLER: The context is that, "I took
25 the checks back."

1 Well, if you wanted it in, I will let it in.

2 MR. KATOWITZ: I think we have really picked
3 out the relevant direct and cross.

4 MR. TEITLER: I will let him have the whole
5 thing as to what was said.

6 THE COURT: That is better.

7 Anything more?

8 MR. TEITLER: Mr. Katowitz?

9 MR. KATOWITZ: We do agree.

10 MR. TEITLER: We will let that whole thing in.

11 THE COURT: Whatever you agree to.

12 MR. TEITLER: What page?

13 MR. KATOWITZ: Well, we just said, Page 369,
14 Line 9 through 370, Line 9.

15 MR. TEITLER: And then after that?

16 MR. KATOWITZ: Page 371, Line 3.

17 MR. TEITLER: Judge, I don't think that we
18 should have 371, it is not relevant to what they
19 are asking.

20 It reads:

21 "He asked me would I put checks and count it
22 for him. I told him I won't."

23 Then: "My next contact with Bunnie was, I
24 took the checks back to him, tried to give them back
25 to him. He wouldn't take them back."

1 MR. KATOWITZ: It is Page 371, Line 5 through
2 10.

3 THE COURT: Okay, all right.

4 MR. TEITLER: Is that it?

5 MR. KATOWITZ: Yes.

6 THE COURT: Now, let me read you the latest
7 note, brace yourselves:

8 "When the defense attorney accepted Steven
9 Hyatt's statements into evidence, did that mean that
10 the defense lawyer accepted what was in the statement
11 or does he have the right to reserve his reputation
12 of the documents until a later time?"

13 We have very very educated people.

14 MR. KATOWITZ: I would just say, may I suggest
15 that your Honor say to the jurors that, Number One,
16 the defense attorney --

17 MR. TEITLER: That he will not vouch for the
18 credibility of his witnesses?

19 MR. KATOWITZ: No. The defense attorney's
20 opinions were expressed in summation and also --
21 well, it is a sticky question.

22 May I just say that, your Honor, that your
23 Honor could possibly tell them that your HONOR had
24 charged on voluntariness and that the defense
25 attorney --

1 THE COURT: I believe if I were to attempt
2 to answer the question the way I understand it, the
3 answer would be that accepting -- I don't know what
4 they mean by "accepting," because I assume they
5 must have the impression that you did accept the
6 statements. I think something along those lines
7 basically. Well, whatever it is, but accepting it
8 into evidence simply means that it may go into
9 evidence, but that that doesn't mean it may not
10 be contested in whole or in part. Then I would
11 remind them that I had instructed them on the question
12 of statements taken out of Court and that they should
13 bear those instructions in mind.

14 That is all.

15 MR. KATOWITZ: Your Honor, I consider that
16 a perfect instruction, but I would add, I can accept
17 something in evidence that the contents are not
18 necessarily -- that it is for them --

19 MR. TEITLER: I would just add a little
20 note --

21 THE COURT: I am open.

22 MR. TEITLER: I would add that the document
23 did go into evidence as substantive proof of its
24 contents.

25 THE COURT: It is for them to accord whatever --

1 MR. TEITLER: Yes, whatever weight they deem.

2 THE COURT: Whatever weight, that is right,
3 whatever weight. I would say that it is for them to
4 decide what weight they will give the statements,
5 but as far as reserving, it does not mean that because
6 defense counsel accepted the statements that he lost
7 the right to contest the statements in all or in
8 part. Then I would remind them that the instruction
9 I gave them with respect to statements taken out of
10 Court is something that they should bear in mind in
11 considering the statements.

12 MR. TEITLER: Well, I mean the fact that he
13 accepted it, I mean it was an offer by the Government
14 with no objection by the defense.

15 THE COURT: I think it was more than that
16 because I vaguely recall Mr. Katowitz saying -- well,
17 it was more than no objection, he was perfectly
18 willing to have it go into evidence or something,
19 I seem to recall something --

20 MR. TEITLER: It led the jury, somebody on the
21 jury thinks that Mr. Katowitz personally accepted
22 that statement, I mean it was the Court which
23 allowed the statement in evidence over no objection
24 by the defense.

25 MR. KATOWITZ: Judge, I think considering the

1 tone of the note and the language used --

2 THE COURT: I think what they are really
3 concerned with is whether he is stuck with a state-
4 ment or has the right to offer to refuse it in
5 some way and that he does have the right to reserve
6 his reputation on the documents until a later time.
7 Well of course obviously there is no more reputation
8 now, indeed it had to be something that was done
9 if anything after the statements went in.

10 MR. KATOWITZ: I think really what they are
11 worried about is the fact that the documents went
12 into evidence.

13 THE COURT: It went into evidence I suppose
14 on the Government's case.

15 MR. TEITLER: Sure.

16 MR. KATOWITZ: Yes, then there was cross-
17 examination but not until sometime later, and then
18 Agent Nicoletti was the last I think major witness
19 to testify and so they may have just been a little
20 confused. However, I take no exception.

21 THE COURT: I will have to feel my way along
22 with this. Bring them in, we will start.

23 MR. TEITLER: The only objection I would have
24 is that your Honor should state it is a document
25 admitted into evidence for whatever proof the jury

1 deems it wise in view of your Honor's instructions,
2 that is with whatever weight, something like that.

3 THE COURT: All right, I will have the jury
4 brought in.

5 (At 5:40 p.m. the jury took its place in the
6 jury box.)

7 THE COURT: Members of the jury:
8 Counsel have gone over the transcript and
9 have isolated those portions of Mr. Hyatt's testimony
10 which bear on the three points which you were
11 interested in and the reporter will now read those
12 sections.

13 Remember, it is both direct examination and
14 cross-examination, so they will be read in tandem.

15 (At this point the Reporter read as follows
16 from the transcript of May 3, 1977, Page 306,
17 Line 14 through Line 25:)

18 "Question: Now, will you please tell us how
19 you first met Jimmy?

20 "Answer: When I first met Jimmy it was at a
21 friend's house, I was at a friend's -house, Jimmy was
22 there, Jimmy asked if I knew anyone that did checks
23 or if I could get checks, and I told him no.

24 "After that he pursued it and he called me
25 at someone else's house, which is Laura Tompkins,

1 164-30 Riverside Avenue. I found out from Laura on
2 numerous occasions that Jimmy had called her trying
3 to get in touch with me. I didn't know why.

4 "Okay, I didn't see him."

5 (The Reporter then read from Page 308, start-
6 ing with Line 13, through Page 310, ending with
7 Line 25 as follows:)

8 "Question: Will you tell us what happened
9 after you met Jimmy the second time?

10 "Answer: After I met Jimmy the second time,
11 I met an individual Uptown Manhattan, 145th and Lenox,
12 by the name of Bunnie. Bunnie asked me would I drop
13 him off at 170th Street and Manhattan Avenue, at a
14 hotel up there. I told him if he waited while I
15 finished what I was doing, I would do it. I dropped
16 him on the way up to Harlem, on 170th Street, and
17 Jimmy had -- Bunnie had a shoulder bag on, he pulled
18 out a brown envelope full of checks, I don't know
19 exactly how many checks, 15, 20, 25, I don't know,
20 he pulled out a number of checks and he asked me
21 would I deposit the checks into my account.

22 "Answer: I told him no.

23 "And he went on, he was telling me how easy
24 it was to do it.

25 "I told him no.

1 "Question: Now, what was your relationship
2 with this man Bunnie, and will you please speak a
3 little slower.

4 "Answer: The relationship with Bunnie was,
5 well, I was working in Manhattan at a restaurant on
6 the corner of 145th & Lenox, the relation with Bunnie,
7 he would come in, Bunnie bought cigarettes and coffee,
8 that was the relationship, that was the total relation-
9 ship, I just knew him from the street in Manhattan.

10 "Question: Will you tell us what happened
11 that day with Bunnie when you met?

12 "Answer: The day I met Bunnie, he offered
13 me checks, he offered to give me just ten checks, he
14 said, to put in the account, and he would take me
15 and show me more, that he had much more checks than
16 this.

17 "I refused to put the checks in the account.

18 "Then Bunnie told me, Bunnie told me that I
19 shouldn't worry about that, you know, that the only
20 person that worried about it was me and that in fact
21 the people in the bank wouldn't be worried about the
22 taking them and putting them in the account and I
23 could get money in ten days and then he would split
24 the money with me.

25 "Question: In fact, did you take those checks?

1 "Answer: Yes, I did, I took the checks to
2 give Jimmy because Jimmy had been bugging me about
3 checks, that is the reason I took the checks in fact
4 to give them to Jimmy to stop him from calling Linda's
5 mother's house.

6 "Question: Now, how long did you have those
7 checks?

8 "Answer: Three to four days.

9 "Question: Well, you tell us what you did with
10 them?

11 "Answer: I took, I took the checks, I took
12 them back to Bunnie, I told him some story, I took
13 the checks to Bunnie, I took them back to him and
14 I told him that the bank told me they were too old.
15 I never took the checks to the bank. He told me, you
16 know, that he didn't, that he couldn't believe that
17 because he had people doing this all the time. He
18 said he gave a mere ten checks and I couldn't do
19 anything. Then he showed me a drawer, and it was,
20 I don't know, maybe 200, 300 checks, I don't know,
21 a lot of checks.

22 "He said, 'I'm going to give you ten, I'm
23 sure you trust me, I know the bank didn't tell you
24 that, trust me.'

25 "Question: Did you leave Bunnie's apartment

1 that day?

2 "Answer: Yes."

3 THE REPORTER: We now go to the cross-
4 examination by Mr. Teitler.

5 (The Reporter then read from Page 360,
6 Lines 18 through 21 as follows:)

7 "Question: Did you look at the reverse of
8 these checks when you first saw them?

9 "Answer: I looked at them, I had them for a
10 couple of days."

11 (The Reporter then read from Page 362 Line 18,
12 through 363, Line 15 as follows:)

13 "Question: It's fair to say you thought about
14 it enough not to deposit them into your account, isn't
15 it?

16 "Answer: I've never deposited checks -- I've
17 never deposited checks into an account, and I wasn't
18 about to deposit checks into an account.

19 "Question: Why not, sir?

20 "Answer: Because I never -- I wouldn't deposit
21 checks into my account. I told him from the beginning
22 I wouldn't deposit checks into my account.

23 "Question: Would it be fair to say you would
24 not deposit into your account because you wouldn't
25 want to be caught?

1 "Answer: It wouldn't be fair to say. It
2 would be fair I didn't deposit in my account because
3 I didn't want to do it.

4 "Question: I'm asking you to explain to the
5 jury why you didn't want to do it.

6 "Answer: I didn't deposit checks in an
7 account. I know nothing about checks.

8 "Question: Would you admit, sir, that you
9 didn't do it because you knew it was illegal?

10 "Answer: I didn't do it because I didn't
11 want to do it.

12 "Question: Then you would not admit it --

13 "Answer: I didn't do it because I didn't want
14 to do it."

15 (The Reporter then read from cross-examination
16 by Mr. Teitler of the defendant Hyatt, Page 369,
17 Line 9 through Page 370, Line 9 as follows:)

18 "Question: Tell us about the first time you
19 met Jimmy. When did that take place?

20 "Answer: I don't know, I don't recall the
21 exact date. The first time I met Jimmy was around
22 the end of November, a person's house, Cheryl Newkirk,
23 on 207th Street, 114-15 207th Street, Queens Village.
24 I met Jimmy there. I was visiting. Jimmy was there.
25 He was talking about checks, walked up to me, asked

1 me if I did checks or knew anyone that did checks.
2 I told him no.

3 "Question: How many people were present on
4 that occasion?

5 "Answer: Jimmy, myself, a friend of Jimmy's
6 and a girl, Cheryl Newkirk.

7 "Question: Did Jimmy ask Cheryl to do checks?

8 "Answer: I don't know whether he asked
9 Cheryl to do checks. When I came downstairs, the
10 person that was with him, Cheryl Newkirk, was standing
11 downstairs. I was upstairs. When Jimmy came in, I
12 don't know if he asked her or not. When I came
13 down, he asked me. He asked me if anyone did
14 checks or I did.

15 "Question: What did you tell him?

16 "Answer: I told him no.

17 "Question: Did you tell him you would try
18 to find --

19 "Answer: I told him nothing. I told him
20 I didn't do checks. I asked him on numerous
21 occasions what made him think I could get checks."

22 (The Reporter then read from Page 371,
23 Line 3, through Line 10 as follows:)

24 "Question: And after he made that statement,
25 what did you do?

1 "Answer: He asked me would I put checks and
2 count it for him. I told him I won't.

3 "Question: When was your next contact with
4 Bunny?

5 "Answer: My next contact with Bunnie was,
6 I took the checks back to him, try to give them back
7 to him. He wouldn't take them back."

8 MR. TEITLER: I believe that concludes the
9 testimony, your Honor.

10 THE COURT: All of it?

11 THE REPORTER: Yes.

12 THE COURT: All right.

13 Now, members of the jury, I have your second
14 note in which you ask:

15 "When the defense attorney accepted Steven
16 Hyatt's statement into evidence, did that mean that
17 the defense lawyer accepted what was in the statement
18 or does he have the right to reserve his reputation
19 of the document until a later time?"

20 Now, the mere fact that a statement is intro-
21 duced in evidence does not mean that it is un-
22 contested: you understand that. However, you may
23 give the statement such weight as you think the
24 statement is entitled to get, bearing in mind the
25 instructions that I gave you concerning statements

1 taken out of court under the circumstances that
2 were described in my instructions.

3 To make it clear, when I say a statement may
4 be contested, the defense did have the right to
5 offer any evidence which might be considered to
6 contest whatever was statement in the statement.

7 Now is there any other question while
8 you are here?

9 Now as I said to you, and I don't wish to
10 interrupt your deliberations in any way, I'm leaving
11 it up to you, that is the decision whether you wish
12 to stay or you wish to consider among yourselves
13 whether you would prefer to return here and continue
14 in the morning.

15 Now if you are going to stay late, then I
16 will have to make arrangements to have you taken to
17 dinner because I don't wish to have you think that
18 you are going to stay right through without no
19 sustenance. I am obliged to see that you are properly
20 fed.

21 Now do you want to talk it over among yourselves?

22 You can retire for that purpose, if you wish.

23 (There was some discussion among the jurors.)

24 THE FOREPERSON: I think the consensus is to
25 come back tomorrow.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 : NOTICE OF MOTION
-against- :
 : 77 CR 17
STEVEN HYATT, :
 :
Defendant. :
-----X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of PHILIP KATOWITZ, duly sworn to this 31st day of March, 1977, and upon all the papers and proceedings heretofore had herein, the undersigned, on behalf of STEVEN HYATT, will move this Court, before the Honorable EDWARD R. NEAHER, in the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York at a time and date to be fixed by the Court for (1) an Order directing the United States Attorney to inform the defendant of the full name, address and whereabouts of the informant known as "Jimmy," his prior criminal record, the substance of all agreements between said informant and any governmental agency and the nature and amount of any consideration given to said informant by any governmental agency for the instant case as well as for any previous cases he was involved in; (2) an Order directing the United States Attorney to furnish material discoverable under Brady v. Maryland; and for such other and further relief as the Court may deem just and proper.

DATED: BROOKLYN, NEW YORK
March 31, 1977

Yours, etc.,

WILLIAM J. GALLAGHER, ESQ.,
FEDERAL DEFENDER SERVICES UNIT
THE LEGAL AID SOCIETY
26 Court Street, Suite 701
Brooklyn, New York 11242

TO:

DAVID G. TRAGER, ESQ.,
UNITED STATES ATTORNEY
CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

-against-

: AFFIDAVIT

STEVEN HYATT, :

: 77 CR 17

Defendant. :

-----X

STATE OF NEW YORK)
COUNTY OF KINGS) SS:

PHILIP KATOWITZ, being duly sworn, deposes and says:

1. He is an attorney associated with WILLIAM J. GALLAGHER, ESQ., Federal Defender Services Unit/The Legal Aid Society, the attorney of record assigned under the Criminal Justice Act to represent the defendant herein, STEVEN HYATT.

2. This affidavit is submitted in support of the annexed motion and is based upon conversations with the defendant, conversations with Assistant United States Attorney STANLEY TEITLER, and an inspection of the complaint and indictment and discovery material provided.

3. The defendant and another are charged in a fifteen count indictment with uttering and unlawfully possessing United States Treasury Checks knowing the same to have been forged and stolen. A not guilty plea was entered by the defendants on February 25, 1977. The case has been set for trial before this Court on April 18, 1977.

4. Your deponent has been advised that the initial conversations regarding the possible sale of checks were had between the defendant and an individual known as "Jimmy," and that said individual was present at the time of the transfer of checks on December 16, 1976.

5. On January 26, 1977, your deponent sent a letter

to Assistant United States Attorney, Stanley Teitler, requesting, among other things disclosure of the existence of an informant and the nature of any agreements between the informant and any governmental agency. Mr. Teitler has responded to the letter but has declined to provide this information. Subsequent conversations in an attempt to resolve this dispute have been fruitless.

6. Your deponent recognizes that the government has a legitimate interest in protecting the identity of its informants. Nevertheless, this privilege must give way where the disclosure of the informer's identity is "relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause." Roviaro v. United States, 353 U.S. 53, 60-61, 77 S.Ct. 623, 1 L.Ed. 2d 639, 645 (1957). Thus, where the informant helped to set up the commission of the crime and thereby raised the possibility of entrapment, or where the informant was actually present during its commission and is a material witness, the government must inform the defendant of his name and whereabouts. See, e.g., Lopez-Hernandez v. United States, 394 F.2d 820 (9th Cir. 1968); United States v. Barnes, 486 F.2d 776 (8th Cir. 1973). Since the informant in the instant case did act as an intermediary and was apparently present at the time of the transfer counsel submits that his identity and location should be disclosed. Otherwise, counsel will be precluded from interviewing him regarding his personal observations and the possibility of entrapment.

7. Your deponent has also requested the details of any agreement between the informant and the government and the nature of any consideration given to the informant for his activities on behalf of the government. The existence of such an arrangement would clearly supply a tangible motive for the

informant to have induced the commission of the crime. Since counsel anticipates that the primary issue at trial will be entrapment, it is respectfully submitted that the information requested is favorable to the accused and material to his guilt. It is therefore discoverable under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).

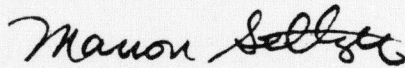
8. Your deponent has been advised that at the time of arrest the defendant submitted handwriting exemplars. As of this date, the results of any handwriting analysis have not been revealed by the Assistant United States Attorney. Your deponent submits that the results of such analysis, if conducted are discoverable under Rule 16 (a)(1)(d), and if not conducted or are negative in results, are discoverable under Brady v. Maryland.

WHEREFORE, it is respectfully requested that an Order be entered directing the United States Attorney to inform the defendant of the material requested in the annexed motion.



PHILIP KATOWITZ

Sworn to before me this
31st day of March, 1977.



MARION SELTZER
Notary Public, State of New York
No. 8917375
Qualified in Kings County
Commission Expires March 30, 1978

CERTIFICATE OF SERVICE

September 1, 1977

I hereby certify that a copy of this
appendix has been mailed to the United States Attorney
for the Eastern District of New York.

Jonathan Hilberman